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27 Cox Communications California, LLC

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

COX COMMUNICATIONS, INC.;
COXCOM, LLC; and COX
COMMUNICATIONS CALIFORNIA,
LLC,

Defendants.

Case No. 2:23-cv-1043-JWH-KES

RELATED CASE:

Case No. 2:23-cv-1047-JWH-KES

**COX COMMUNICATIONS, INC.,
COXCOM, LLC, AND COX
COMMUNICATIONS
CALIFORNIA, LLC'S NOTICE
OF AMENDED
COUNTERCLAIMS AND
OPPOSITION TO ENTROPIC'S
MOTION TO DISMISS**

DEMAND FOR JURY TRIAL

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,
5 Counter-Claimants,

6 v.
7 ENTROPIC COMMUNICATIONS,
8 LLC; MAXLINEAR
9 COMMUNICATIONS LLC; AND
10 MAXLINEAR, INC.

11 Counter-Defendants.

1 Defendants and Counter-Claimants Cox Communications, Inc., CoxCom,
 2 LLC, and Cox Communications California, LLC (collectively “Cox”) oppose
 3 Plaintiff and Counter-Defendants Entropic Communications, LLC’s (“Entropic”)
 4 Motion to Dismiss Cox’s counterclaims under Fed. R. Civ. Pro. 12(b)(6). (Dkt. 236,
 5 the “Motion”). Cox opposes the grounds on which Entropic moved.

6 As detailed below, while there is no merit to Entropic’s Motion, Cox has
 7 elected to moot same by filing amended counterclaims that further address the issues
 8 Entropic raises as well as facts uncovered via further discovery. *See* Cox’s Answer
 9 and Defenses to Complaint and First Amended Counterclaims (“Amended
 10 Counterclaims”). Cox submits its Amended Counterclaims pursuant to Fed. R. Civ.
 11 Pro. 15(a)(1)(B), which states that a party may amend its pleading once as a matter of
 12 course, “if the pleading is one to which a responsive pleading is required” and the
 13 amendment is no later than “21 days after service of a motion under Rule 12(b), (e),
 14 or (f).” Cox’s counterclaim is a pleading to which a responsive pleading is required,
 15 Cox has not before amended its pleadings as of right before submitting this
 16 amendment and Cox’s amendment is submitted within 21 days after service of the
 17 Motion. *See, e.g., Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500–WQH–BGS, 2010 WL
 18 4569893, at *2 (N.D. Calif. Nov. 5, 2010) (“Nike filed its Amended Counterclaims,
 19 less than 21 days after Bauer filed the pending Motion to Strike and Dismiss” and
 20 “pursuant to Rule 15(a)(1), Nike was not required to seek leave of Court to file the
 21 Amended Counterclaims.”).

22 Cox demonstrates below that, while Cox’s existing pleadings suffice despite
 23 Entropic’s contrary arguments, the Amended Counterclaims that are based upon
 24 further discovery obtained in this action address, and moot, all the points Entropic
 25 raises.

26 **Entropic’s Rule 12 Arguments:** Contrary to Entropic’s assertions (ECF No.
 27 236, at 11-17), Cox’s existing counterclaims fully identified the relevant contractual

1 terms, privity, Cox's performance as a former MoCA member, and Entropic's acts
 2 that induced breach or disruption of the contract and caused damage and injury to
 3 Cox. (E.g., ECF No. 95, ¶¶ 530-49, 552-54, 557-59).

4 Entropic first urged that Cox fails to plead it is a party to the IPR Policy and
 5 therefore cannot bring a tortious interference claim. (ECF No. 236, at 11-12). This is
 6 incorrect, as Cox's original counterclaims, and Plaintiff's averments in the original
 7 Complaint, demonstrated Cox's contractual membership in MoCA and concrete
 8 benefits it received and expected to receive as such. (E.g., ECF No. 95, at ¶¶ 536-40).
 9 Likewise, Entropic's assertion that Cox has not pled the Asserted Patents are essential
 10 to MoCA ignores its own averments in the Complaint that each of the Asserted Patents
 11 is essential the MoCA standards. (E.g., ECF No. 1, at ¶¶ 109, 143, 177, 211, 245, 279,
 12 313, 347, 381, 415, 449, 483). Nonetheless, the Amended Counterclaims, including
 13 at ¶¶ 516, 539-40, 552-55, 563, 572, further detail facts concerning the above points
 14 and establishing relevant injuries, including additional facts revealed following
 15 discovery.

16 Next, Entropic incorrectly argued that Cox's counterclaims do not allege acts
 17 by Entropic sufficient to plausibly claim Entropic induced MaxLinear to breach the
 18 IPR Policy. (ECF No. 236, at 12-15). Cox's original counterclaims included
 19 averments plausibly demonstrating Entropic's awareness of the IPR Policy and
 20 MaxLinear's obligations thereunder and induced MaxLinear to breach those
 21 obligations through its assignment of the Asserted Patents. (E.g., ECF No. 95, at ¶¶
 22 529-34, 539-40, 543-48). Based upon additional discovery, however, Cox's Amended
 23 Counterclaims, including in ¶¶ 531, 539-40, 552-55, 556-71, further supplement these
 24 aspects of its claims and identify additional bases for concluding that Entropic
 25 improperly induced MaxLinear to breach the IPR Policy.

26 Finally, Entropic claimed that Cox failed to show a legally cognizable harm.
 27 (ECF No. 236, at 15-17). Cox's counterclaims already plausibly demonstrated that
 28

1 Entropic's inducement of MaxLinear's breaches created a void assignment that
 2 deprived Cox of the benefit of its contract and caused it to incur the expense of
 3 defending this case that would not otherwise have been brought. (ECF No. 95, at ¶¶
 4 538-40, 544-49). The existing counterclaims likewise detailed the unjust enrichment
 5 facts that showed relevant injuries under applicable law. (ECF No. 95, at ¶¶ 530-31,
 6 537-40, 561-63). Nonetheless, the Amended Counterclaims, including at ¶¶ 552-558,
 7 566-73, further detail facts establishing relevant injuries, including additional facts
 8 revealed following discovery.

9 Accordingly, the Amended Counterclaims both fully address and moot
 10 Entropic's positions on the adequacy of Cox's tortious interference claim.

11 * * *

12 The Motion is without merit. Independently, it is moot as a matter of law
 13 because the Amended Counterclaims are the only operative pleading. *See Ramirez v.*
 14 *County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) ("Plaintiff's Second
 15 Amended Complaint superseded the First Amended Complaint, and the First
 16 Amended Complaint ceased to exist. Because the Defendants' motion to dismiss
 17 targeted the Plaintiff's First Amended Complaint, which was no longer in effect, we
 18 conclude that the motion to dismiss should have been deemed moot"); *Phillips v.*
 19 *County of Riverside*, No. 5:20-cv-01266, 2023 WL 4290379, at *1 (C.D. Cal. May
 20 12, 2023) ("Because Defendants' Motion to Dismiss targeted Plaintiff's SAC, which
 21 is no longer in effect, Defendants' Motion to Dismiss is moot"); *Bauer*, 2010 WL
 22 4569893, at *2 (denying motion to dismiss amended counterclaims because "[o]nce
 23 filed, an amended pleading supersedes the original pleading in its entirety.") (citation
 24 omitted).

25 Finally, even if Cox did not have the option to exercise its amendment as of
 26 right, the amendments Cox has made are appropriate and allowable under controlling
 27 authority. Rule 15(a)(2) states that "[t]he court should freely give leave [to amend]

1 when justice so requires.” There is a strong public policy in favor of permitting
2 amendment, and the Ninth Circuit has made clear that “Rule 15’s policy of favoring
3 amendments to pleadings should be applied with ‘extreme liberality.’” *Bowles v.*
4 *Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Court has already found that Cox had
5 good cause and acted with diligence in presenting its original motion to amend, and
6 that justice required adding Cox’s counterclaims. (ECF No. 86, at 3). Entropic says
7 nothing to undercut those findings and, accordingly, there is no justification for its
8 request to preclude any amendment.

9 Accordingly, Cox requests the Court deny the Motion.

10 Dated: January 9, 2024

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